

Department of Employee Relations  
Exclusion From Employment Policy – FAQ Sheet  
Revised May 8, 2009

1. How do I know if an employee needs to be excluded from employment?

An employee should be excluded from the workplace if he/she meets any one of the following:

- is currently experiencing symptoms consistent with Novel H1N1 Influenza (H1N1) (as defined by the CDC),
- is diagnosed by a healthcare provider as having H1N1, or
- is a Health Care Worker (HCW)\* who has been identified by the public health authority as a direct contact of a confirmed or probable case.

\* Health Care Workers for purposes of this policy include Public Health Nurses, Clinic Assistants, Laboratory Staff, Social Workers, Fire Department personnel responding to medical service calls, and others who work directly with patients or in clinical settings.

2. What do I do if an employee needs to be excluded from employment?

Supervisors should use prudent judgment when considering excluding an employee from work. Please read and familiarize yourself with the H1N1 Symptoms. CDC guidelines on the H1N1 Flu can be found at <http://www.cdc.gov/h1n1flu/>.

Supervisors who have concerns or questions about employees must consult with an MHD representative at 745-4065 before considering sending the employee home and excluding him/her from the workplace. If, after careful consideration and/or consultation with the MHD, it is determined that the employee should be excluded from employment, the department head or authorized designee should complete the top portion of the "STATEMENT FOR CITY OF MILWAUKEE EMPLOYEES EXCLUDED FROM EMPLOYMENT BECAUSE OF SYMPTOMS OF NOVEL H1N1 INFLUENZA" form and give it to the employee. Explain to the employee that he/she is being excluded from employment until he/she meets the criteria to be allowed to return to work.

If the employee is a designated HCW, you should also explain the option of going to Concentra for testing.

3. What if the employee calls-in sick, or voluntarily goes home because he/she suspects H1N1?

The employee can go/stay home if he/she has the symptoms. The employee may request sick or other paid leave and should follow all departmental leave rules and policies.

4. What if an employee calls-in sick, or voluntarily goes home, and claims the illness is something other than H1N1 (i.e. back spasms, migraines, asthma attack, etc.)

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Do not assume that every employee who calls-in as ill has symptoms of H1N1. If, when he/she reports back to work, he/she displays symptoms consistent with H1N1, the protocol for exclusion should then be followed.

All city and departmental policies and procedures regarding requesting and receiving approval for sick leave will apply. Most call-in policies require that the employee speak directly with the supervisor or designated person and provide a general description of their illness.

**5. I have an employee who has traveled to Mexico in recent days – should he/she be excluded from employment?**

Having traveled to Mexico, or anywhere else, does not mean that the person has H1N1. The decision to exclude someone from employment is based on whether he/she is experiencing symptoms consistent with H1N1, has been diagnosed as having H1N1, or is a HCW who has been identified by a public health authority as a direct contact of a confirmed or probable case.

The MHD should be consulted only if an employee is thought to be ill and not because he/she traveled recently.

**6. What do I do when an employee says that someone in their family, or living in their household, has H1N1?**

You should call 745-4065 and consult with someone from the MHD.

**7. What do I tell other employees when someone has been excluded?**

Supervisors should never discuss an employee's health with any other employee. If other employees ask, you should simply state "Just as I don't discuss your health status with other employees, I am not going to discuss his/hers with you."

If employees are expressing concern about their own health safety you should tell them that the Department is following CDC and public health protocols and taking appropriate measures to ensure the safety of all employees.

The public health authority is responsible for collecting and monitoring all test results, and performs follow-up to confirmed or probable cases. This follow-up includes contacting people who are known contacts to a confirmed or probable case and instructing them as appropriate.

**8. How do I know when the employee is to be allowed to return to work?**

Individuals who are excluded from employment under this protocol will not be allowed to return to work until either:

- a public health approved test for H1N1 demonstrates a negative result, or
- at least 7 days have elapsed since the onset of the symptoms AND the symptoms have resolved for at least 24 hours.

The employee is expected to return to work immediately once one of the above criteria has been met, unless otherwise directed by the department. If he/she chooses to remain at home because still not feeling well, all regular City and departmental sick leave policies and procedures should be followed.

**9. Should I call an employee at home to get information about his/her symptoms, or an update as to his/her health status?**

No. Once the employee has been excluded, it is up to the employee and his/her health care provider to determine his/her ability to return to the workplace.

**10. Is this a violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)?**

No. HIPAA provides protection of personal health information. It does not prohibit an employee from providing information to his/her employer. It is the healthcare provider's responsibility to obtain consent from the employee prior to releasing any protected health information.

**11. How is the employee who has been excluded from employment to be compensated?**

If the employee meets ALL of the following criteria, he/she will be paid by the City for the period of exclusion (The employee will not be required to use sick leave pay benefit):

- the employee is a designated Health Care Worker, AND
- he/she goes to Concentra to be tested for H1N1 within the first 24 hours of exclusion, AND
- the test for H1N1 demonstrates a negative result, AND
- the employee immediately returns to work after receiving the result from Concentra.

The bottom portion of the "STATEMENT FOR CITY OF MILWAUKEE EMPLOYEES EXCLUDED FROM EMPLOYMENT BECAUSE OF SYMPTOMS OF NOVEL H1N1 INFLUENZA" form, completed by Concentra, will verify that the employee has met all requirements to be paid under this provision.

If the employee is a designated HCW who goes to Concentra within the first 24 hours of exclusion, AND the test for H1N1 demonstrates a positive result, the employee will be required to use sick leave pay or any other accrued benefit to cover any period of absence.

All other individuals who are excluded from employment under this policy, including HCWs who use their own physician or any other care center instead of Concentra, will be required to use sick or other accrued leave for all time away from work.

If the employee fails to return to work when the exclusion period ends, he/she must request the additional time off in accordance with the department leave rules and policies.

**12. Why is there a difference in the way an employee is compensated if he/she goes to Concentra vs. using his/her own medical provider?**

The City of Milwaukee is working with Concentra to assure H1N1 samples are processed in the most timely and efficient manner. The goal is to allow the designated Health Care Worker who does not test positive for H1N1 to return to work as quickly as possible.

**13. Is the employee required to use Concentra for testing services?**

Employees may use EITHER Concentra or their own health care provider.

**14. What if the employee does not have any/enough sick leave accrued?**

Employees who are eligible for sick leave benefits (including newly hired employees in their initial six-month probationary period), will be allowed to borrow up to 40 hours of sick leave during a period of exclusion.

An employee who has been allowed to borrow, or "go negative", in his/her sick leave account will not be able to access future sick leave hours until the full balance that was borrowed has been restored.

**15. How will the use of sick leave pay affect the employee's other benefits?**

An employee who has been excluded from work will not have the absence counted as an occurrence under Sick Leave Control policies.

If sick leave is used, provisions under the Sick Leave Incentive Program will apply.

**16. Can a healthy employee refuse to come to work, or perform job duties because of a belief that by doing so, he or she would be at an increased risk of catching H1N1?**

No. If the employee refuses, he/she may face disciplinary action as a result of refusing to work.

Each situation should be reviewed on a case-by-case basis in consultation with the Department of Employee Relations / Labor Relations.

**17. Can an employee who is exposed to, or diagnosed with H1N1 file a Worker's Compensation Claim?**

If an employee becomes ill because of a direct workplace exposure, he/she may be entitled to injury pay under worker's compensation. The supervisor should report the claim, and all other worker's compensation protocol should be followed.

The Worker's Compensation (WC) section of DER will do an investigation to determine if the illness is a result of a direct workplace exposure. Specific questions about worker's compensation should be directed to the WC office at 414.286.2020.

**18. What if the employee requests to work from home during the period of exclusion?**

For many jobs, this is not possible. For some jobs, especially in management, there are things that the employee can accomplish from home. The department must determine what is appropriate for each individual situation.

**19. Can an employee receive FMLA leave because of H1N1?**

FMLA is not necessarily applicable because of exclusion from work, or closing of schools or businesses. FMLA may be approved in accordance with State and Federal laws and the City of Milwaukee's FMLA policy. The employee is required to provide the appropriate medical certification to document the serious health condition of him/herself or a qualifying family member, and must give appropriate notice according to the laws and policy.

**20. What happens if things get so severe that the City shuts down non-essential operations?**

The City of Milwaukee is currently developing a policy to address this and other pandemic planning concerns.